UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN RE MUNICIPAL DERIVATIVES ANTITRUST LITIGATION 08 Civ. 2516 (VM)(GWG)

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New York, N.Y.
May 11, 2011
11:15 a.m.

Before:

HON. GABRIEL W. GORENSTEIN,

Magistrate Judge

APPEARANCES

HAUSFELD LLP
Attorneys for Direct Class Plaintiffs
BY: MICHAEL D. HAUSFELD
MEGAN E. JONES

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BY: KEVIN R. SULLIVAN
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ERIC T. SCHNEIDERMAN, Attorney General of the State of New York
Department of Law
Attorney for Intervenor
BY: ELINOR R. HOFFMANN

(Case called)

THE COURT: We are here based upon a number of letters that I asked, I guess four dated May 3 and another four dated May 9.

Well, I'm in a little bit of a difficult situation because Judge Marrero has not indicated in any great detail the substance of what he expects would be included in the class notice. He has issued an order, certainly, on the topic, the March 1 order, and there is some words that everyone is trying to parse there. And I think they provide some guidance but not perhaps 100 percent guidance as to what is relevant here in terms of the plaintiff's requests for discovery.

So I think what I want to try to do as a model is the following. I don't know if it's going to work, but I'd like to try it. And the model is that if there is some piece of information or discovery that's not burdensome and that can be supplied on a reasonable time frame, I'd like the plaintiffs to get it, and then we can postpone the argument about its relevance to the presentations that will be made to Judge Marrero.

I guess my main point that I'd like Bank of America and the Attorney General to keep in mind is that the mere fact that the plaintiffs get some piece of information does not, by any means, mean that I think it's something that should be included in the class notice. For all we know, the class

notice, just as is written out, will be satisfactory to Judge Marrero the way the defendants wrote it. I don't know. But certainly any rulings that I make. Let's say that the plaintiff should get some piece of information, assuming I make such rulings, has no bearing on that question.

And I guess at the end of it we should probably set the deadline for when the presentations are going to be made to Judge Marrero, because right now I don't know that there are any such deadlines. I don't even think he has put in a deadline.

So with that in mind, I think what I'd like to do is go through the categories of information. And if it's something that Bank of America has, I would certainly turn to them first. And then if it's something that only the Attorney General has, then I will turn to the Attorney General's office.

I think I have worked off the letter from Ms. Jones of May 3 for purposes of figuring out the categories, and I'm limiting myself to what's identified as A through E in the first paragraph of that letter, so I think I'd like to go through that. I think that's the universe. I notice the word inter alia is used. That's not very helpful. I am going to go through those. And if for some reason the plaintiffs think there is something else, I guess I would be willing to hear from them on that point.

On question 1, to whom the state agreement is being

mailed, again, my ground rule here for the moment is, I don't want to hear about relevance. I just want to hear about burden and timeliness.

So limited to that question, I'll turn to Bank of America because I know they offered some things and they said they had some things, or maybe I should turn to plaintiff first to see what they are missing.

MR. SULLIVAN: Your Honor, Kevin Sullivan. I'm happy to go through it and tell you what we have given them, and then they can say if they don't have it or not. But it's up to you.

THE COURT: Go ahead.

MR. SULLIVAN: In terms of to whom the notice of state agreement is going to be mailed, it is defined --

THE COURT: Are you repeating things, if I might ask, that are in your letter? If you are, it might be better for plaintiffs to say why it was inadequate. If this is something completely new to them, go ahead.

MR. SULLIVAN: This is information we have identified in our letters.

THE COURT: Then let's hear from them as to why it's unsatisfactory.

I'll now turn to plaintiffs. They provided certain information in their letters. Tell me what more you need or why it's not satisfactory. Or maybe it's fine. I don't know.

People should remain seated because people are on the

telephone, and we need to be close to the microphones.

MR. HAUSFELD: This is Mr. Hausfeld, your Honor. The description made by Bank of America is by category as opposed to by identification of entity.

THE COURT: Do you want a list of the entities?

MR. HAUSFELD: Yes. And we would need an identification of the definition of a covered derivative so we have the identification of the products that are being covered in terms of the entities that are being addressed.

THE COURT: List of entities and identification of the particular product.

Talk to me about burden on that.

MR. SULLIVAN: Your Honor, they have every entity that comprises the universe of who is going to get the notice because they have the same damage data that the AGs have.

In addition, they have --

THE COURT: Mr. Sullivan, if I'm speaking, it's really important that you listen to me. You interrupted me once. If I have got something in my mind, if you don't satisfy me, we are never getting out of here.

Normally, in discovery disputes when people say they already have it, I say, sorry, produce it again. Tell me what the problem is with giving them the list of entities.

MR. SULLIVAN: Your Honor, there is no problem with giving them another set of the same database that they have,

that have some of the entities in it.

In addition, we have agreed to give them a specific list of addresses for counter parties that we have. And they asked us for that information in connection with the Morgan Stanley settlement. We said we would produce it based upon on what they wanted it for. They then said they may want it for other purposes. We are happy to produce it to them as long as we know what they want to use it for.

The only thing we don't want them to use it for is to go out and make separate contact with the eligible counter parties before this process is over.

THE COURT: It sounds like you're willing to give them the lists of entities. And what about the identification of the product?

MR. SULLIVAN: The identification of the product is in the database they have. We can give them the list of the entities with the trade number. They can run that against the database they have and figure out exactly what product that entity traded with that, and they will have all the information.

THE COURT: Does that make sense to you on this side?

MR. HAUSFELD: Not really, your Honor. The proposed settlement agreement covers -- includes covered derivatives with no definition of what a covered derivative is so that a participating entity, all of whom would also be members of the

class, would not know which derivatives are being included within the proposed settlement.

MR. SULLIVAN: Your Honor, the covered derivatives are defined in the agreement with the AG as agreements that are covered by what's called attachment A. Attachment A then provides more information about what those covered derivatives are. The eligible counter party that received the notice will get a specific amount, will be told exactly how much money they are eligible to receive. The plaintiffs will know who those counter parties are because we would have told them. They will know --

THE COURT: Told them when?

MR. SULLIVAN: They have the full list now. We will give them the addresses which has the specific list from 1998 to 2003 that Bank of America considers the group. The Attorney General will make the final decision as to who actually gets the notice, not Bank of America. So if there is information that the Attorney General needs to give, they can ask them. But they will have the list of the eligible counter parties and their addresses and they will have all of the information about the trades that they did.

MR. HAUSFELD: Sounds to me, your Honor, as if the Attorney General should be providing that information. For example, in attachment A to which Mr. Sullivan refers, municipal derivatives is defined as municipal derivatives that

are purchased by a particular entity. That's not a sufficient definition to understand what type of municipal derivative --

THE COURT: You know for each particular entity what derivative?

MR. HAUSFELD: Yes.

THE COURT: Do you have that or only the Attorney General has that?

MR. SULLIVAN: The Attorney General makes the final decision as to who gets this notice.

THE COURT: Has that decision been made yet?

MS. HOFFMANN: Your Honor, that decision has not been made with finality yet. We are still addressing the criteria in the agreement.

I do want to point out that the notice also defines the covered derivative, and the information upon which we base our list of addressees database is the same database that I believe plaintiffs have. We do not have a definite list of the addressees yet.

THE COURT: When are you going to have it?

MS. HOFFMANN: We are hoping soon.

THE COURT: Meaning tomorrow or a month from now?

MS. HOFFMANN: I hope within a week from now, but I don't know for sure.

THE COURT: Can you provide it to them in a week from now? Can you do it?

MS. HOFFMANN: Your Honor, our position is that we are not subject to discovery at all. Whether we do that, I would have to take that up with my group, because to some extent it's a policy decision within each person's office. But I would be concerned about --

THE COURT: Are you not going to be providing it to Bank of America?

MS. HOFFMANN: Yes. Bank of America will --

THE COURT: They could provide it, if that makes you feel better.

MS. HOFFMANN: I would be concerned, as Mr. Sullivan was, about the purpose for which these addresses are going to be used.

THE COURT: That I could limit through an order saying they can only be used for purposes of making a proposal as to the content of the class notice, be limited to those two.

I assume you couldn't object to that, right?

MR. HAUSFELD: We would probably agree to it, your Honor.

THE COURT: It sounds like you are going to have this in a week to Bank of America to turn it over to plaintiffs.

MS. HOFFMANN: We hope to. We are talking with Bank of America. There are some deals that we can't match to make sure they correctly belong in the group, and we are working through that.

THE COURT: I don't want to rush you because you folks are the ones with the greatest incentive to move this along.

MS. HOFFMANN: We are trying to move it along as quickly as possible. We are working diligently to do that. I think Bank of America has been diligent also in working with us on that issue, and we are trying to finalize the list. Again, I'm not in a position to agree to produce it.

THE COURT: I'm not asking you to agree. I'm just asking when you are going to be giving it to Bank of America.

MS. HOFFMANN: Again, I'm hopeful it will be done in the next week. It has taken longer than we expected.

THE COURT: Is this going to include the identification of the product that we have been talking about?

MS. HOFFMANN: Our list will not include the precise identification of the product, I don't believe. I have to go back and check. But I think that can be easily determined from the trade numbers associated with them.

THE COURT: So is this going to do it?

MR. HAUSFELD: It's difficult to say, your Honor, because we also need the allocation formula in order --

THE COURT: I haven't gotten to that yet. Is it related?

MR. HAUSFELD: Yes.

THE COURT: Go ahead.

MR. HAUSFELD: In the complaint that was filed by the

class plaintiffs, there is a definition of covered derivatives and there are seven types of derivative products. In general discussions with the bank it's been their position that there were overcharges on some but not all of those derivative products. We would need to know how the bank and the states reached agreement as to which derivative products they were making restitution on to be able to advise our clients and for potential putative class members to understand which derivative products they purchased. They were receiving restitution, yet were being required to give releases on all derivative products.

THE COURT: It seems to me, unless I'm misunderstanding you, that what a particular party needs, perhaps, is the amount of money that they are getting. It covers -- they are going to give up a claim against any possible product they have with respect to Bank of America, right?

MR. HAUSFELD: Yes. But that's the problem. There are seven different products that could have been purchased. The payment may only go to one or two.

THE COURT: But surely the party knows what product it has, or doesn't it?

MR. HAUSFELD: It will know what products it purchased. It will not know what products the restitution is being made on and what products for which there is no

restitution.

THE COURT: That's what I don't understand. What does it matter? They are getting the sum of $100,000. If they purchased four of the seven products and whether their formula discounted one particular product as zero or get paid three cents on the dollar for another one, what does it matter? They know what they are getting to cover everything.

MR. HAUSFELD: It matters because of the mix of products that purchases may be more weighted for those products for which they are not getting any restitution. And the participating entity may wish not to release all its claims and to pursue those claims because it had larger purchases in the nonrestituted products.

THE COURT: You still lost me. Because they have to give up all the claims, regardless. They have to give up their claims on everything, regardless.

MR. HAUSFELD: That's a choice that they need to make. And in making that choice, if in fact they have greater purchases in products for which they are receiving no restitution, they may decide that it's not worth it to take two cents on 2 percent of their sales when they have, you know, maybe dollars on 98 percent of their sales.

THE COURT: Let me try it one more time. I bought seven products, A through G. I'm being given $100 to extinguish my claims against Bank of America. What does it

matter if in Bank of America or in the Attorney General's mind $98 is being allocated to product F? You come back when I ask you that question and you say, well, it might matter because they feel that product A, in fact, is worth a whole lot of money and they are only being paid 50 cents on product A. I keep saying to you, they are giving up their claim for A through G for $100. And if they think product A is worth a thousand dollars, then they won't do it.

MR. HAUSFELD: There is not ability of a potential claimant to make that assessment, your Honor, given the fact that all they are talking about in the notice and in the settlement is an aggregate of derivative products. If I only bought one of product A, but 99 of products B through Z, and I'm getting $2 for product A, I may not want to opt into a settlement where the greater portion of my purchases deal with a product for which I'm not receiving any allocated restitution.

THE COURT: I feel we are having the same conversation literally three times. Can anybody help us here? Am I missing something?

MR. SULLIVAN: You've stated it exactly correctly. The notice gives them a specific amount they are entitled to. They know what transactions they have done with Bank of America. The notice tells them that others, including the class plaintiffs here or the Oakland plaintiffs, feel they can

get them more, and they were -- also, they might end up getting less. They have the information from which they can then make a judgment. If they have a question, if they have options, they can call the Attorney General in their state if it's one of the working group members, they can consult --

THE COURT: You're straying. I don't want you to stray.

MR. SULLIVAN: They have options. They have the basic information. They know what transactions they have entered with Bank of America. And they know what they would have to release. Whether they have done five or ten or one transaction with Bank of America, they can -- they have enough information to make a reasoned judgment as to whether this makes sense to them. And if it doesn't make sense to them or they are confused and do nothing, they lose no rights. They don't give up their claim.

THE COURT: Again, we are getting outside the areas. I know all this. I'm still in exactly where I were before. Nothing you said, unfortunately, Mr. Hausfeld, has explained the relevance of this.

As an aside, I know I said I wasn't going into relevance, but for some of these I think I am going to because I have to understand in order to even allow discovery on it.

Did someone else have an idea?

MR. HAUSFELD: Can I try this, your Honor. If the

list is being composed of those entities which purchased covered products, and notice is being sent to those who are deemed qualified by the state AGs, based on purchases that the state AGs are connecting with regard to this settlement, that information is readily available. And if that information is not only possessed by the states but is the nexus for the states sending out not only the notice but the amount, it would seem not burdensome to provide us with the same information which provided the basis for the state's decision as to who gets the notice and what amount of money they are getting, based on the transactions that the state believes are covered.

THE COURT: I am not sure I followed what you just said. Try it again. What is it you want? We already talked about your getting a list of entities and the products when they have finished doing this task. Are the amounts included, too?

MS. HOFFMANN: Your Honor, in the list --

THE COURT: They can derive the amounts?

MS. HOFFMANN: In the notice -- the notice will clearly state the amount to which each entity is entitled to.

THE COURT: I think they are looking for -- are you looking for the amount in advance, or not necessarily?

MR. HAUSFELD: My understanding is, the notices will contain an amount in advance.

THE COURT: I know the notice will have an amount.

I'm talking about whether you in discovery are looking for the amount for each particular entity.

MR. HAUSFELD: Yes.

THE COURT: And was that part of what we had previously agreed you were going to be giving to Bank of America and Bank of America was going to be giving to plaintiff?

MS. HOFFMANN: Your Honor, we were not planning to do that, no.

THE COURT: Our discussion had been the list of entities and some number that would allow them to derive the products that were involved.

MS. HOFFMANN: That's right. There has been reference to the transactions.

THE COURT: When I then turn to you and said, what more are you looking for, you started talking about allocation. We started going down the road where I said the same thing five times and you said the same thing five times, we made no progress. I am not sure where we are right now.

MR. HAUSFELD: We would like to be in the same position that the state AGs are in in terms of understanding not only who gets the notice, but what transactions prompted the state AG not only to send the notice to that entity, but the amount that the state AGs ascribing to that entity, and then the products that were purchased by that entity that the

state AGs have determined are eligible for restitution.

THE COURT: Again, you still have not persuaded me even as to relevance to this. I don't know if you want another shot at it, but I feel like we have done this a bunch of times. If you have nothing more to add, tell me and we will go on.

MR. HAUSFELD: If I could try it this way. I am not sure it's adding, but hopefully clarifying. We would like to be in the same position as the state AGs are in with respect to the knowledge as to not only who is being solicited to opt in, but why they are being solicited to opt in, and the basis for the decision by the state AGs as to which products the state AG is allocating a restitution and the amount. All of that information --

THE COURT: I guess my response to that is, I need to know why that is going to enable you to make comments or propose language in the class notice that you wouldn't have otherwise been able to do?

MR. HAUSFELD: Because with respect --

THE COURT: And if the answer is, you want to judge whether they did a good job of coming up with the amount of money, that's going to be a very tough road for you to hoe. I don't know that that's something that you're entitled to know.

MR. HAUSFELD: Despite the absence presently of the reference to detailed findings and conclusions by the Court in a separate opinion, the Court expressed three essential

concerns.

THE COURT: You're talking about Judge Marrero?

MR. HAUSFELD: Yes.

THE COURT: Go ahead. Unfortunately, the one thing I didn't bring was the most important thing, which was the letter that had all the documents attached to it. But I happen to have a copy of the --

MR. HAUSFELD: He identified as page 3 three essential concerns about this process. And just before the paragraph that's labeled ordered, he identified that it was necessary to protect the interests of the putative class members, to protect the Court's jurisdiction, and to preserve the Court's ability to render meaningful relief on the claims before it.

Clearly, the information we requested is extremely relevant to that last of the Court's concerns because what relief may be obtained now will clearly affect the relief that the Court can render to the rest of the class under the remainder of the claims because this is a matter involving joint and several liability, at a minimum.

THE COURT: But if I'm an entity and I'm deciding whether to opt into this or not, what I need to know is how much I am getting, and then make a judgment about whether I can do better in the class action.

MR. HAUSFELD: That would only be, your Honor, if you're getting either something for everything. But if you're

getting something for less than everything that you did, another aspect of what you would need to decide is what it was that you purchased and whether or not you think that what you're getting is sufficient to release your claim for everything when the greater portion of what you purchased may not be compensated for at all.

THE COURT: I'm getting a single number to cover everything. This is the same thing we did five times. I don't know if I want to do it six times.

MR. HAUSFELD: I don't disagree with your Honor's present position, but it's a position in a class that occurs inherently when there is a number of items that are purchased. If I purchase ten different items and I purchase item one only once, but I purchase the other nine a thousand times, it may not be worth it to me to take a settlement as a single sum for all the purchases if all I'm getting is a penny on the one item that I bought. If, however, it may be, your Honor, that it's a penny for all ten items, then I could understand that my claim may not be worth that much in the aggregate.

THE COURT: What do you care what's going on in the mind of a person who is offering you? If they are offering you $100, what does it matter if in their mind the hundred is allocated all to item A or all to item G? What does that matter? You are giving up A through G, regardless.

MR. HAUSFELD: Because it may make a difference to me

if I have greater purchases in the items for which I'm not being offered any restitution, and I may decide that I want to pursue my claims for those products.

THE COURT: We have now done it seven times. That's it. We are done. I keep saying the same thing and your answer just doesn't make any sense to me, Mr. Hausfeld. I know you are trying to explain it to me. I know you are doing a good-faith effort. But you have not persuaded me that this even meets the relevance standard that I would need to require production of information on it.

We need to go on to another category. You are going to have your opportunity, presumably before Judge Marrero when you write a letter saying that I have denied you this thing. If he disagrees with me, maybe he will send it back.

Let's go on.

MR. HAUSFELD: Yes.

The next area, though --

THE COURT: We may have covered other things.

MR. HAUSFELD: I was about to get exactly to the next area. The allocation formula is something that we would want to know.

THE COURT: This is the same issue, in my mind, right? This is the same principle that is at issue.

MR. HAUSFELD: It's without the detail. It's the overview. What formula was used to make the allocation on an

individual entity.

THE COURT: As between particular entities.

MR. HAUSFELD: Yes.

THE COURT: As opposed to how we came up with the 65 million, which is what more of our discussion was going to and why I should or should not accept my piece of the 65 million. This is the question of -- how many potential opt-ins are there, approximately? 5,000, 50,000?

MR. SULLIVAN: I can give a guesstimate of that. There were approximately -- just one second. There are well over 3,000 trades in the entire damage database. The number of counter parties in the '98 to 2003 time period would be a subset of that, so it's a significant number.

THE COURT: Let's pretend it's 4,000. So what you're asking, of the 65 million, how did they pick a number for each of those 4,000 people?

MR. HAUSFELD: What formula, if any, was used to derive the amount that each would get?

THE COURT: Unfortunately, I need to pose the same question to you, which is to say, I, as an entity, am going to learn that my share is $100,000. Why will it matter to me whether the municipality next door got 50,000 or 150,000, or whatever it might be?

MR. HAUSFELD: If there is no rational basis for it, you may decide that this is nothing that you want to accept.

It is a standard requirement in any settlement of collective claims, multiple claims dealing with the same wrong that class plaintiffs always identified to the Court and to the class. And here there is no difference between soliciting opt-ins or sending out a notice to a class where they can opt out if they choose not to participate. You need to include the formula of allocation so everyone understands that you weren't treated disparately from someone else in the same position.

MS. HOFFMANN: Your Honor, may I address that?

The first thing I'd like to say is that we believe that the notice as drafted provides a description of the allocation formula that's consistent with notices that we reviewed even in class actions, even ones that Mr. Hausfeld set out. We believe that's already provided.

THE COURT: Just remind me what paragraph that's in.

MS. HOFFMANN: Yes. If the Court has a copy of our question and answer packet, our proposed question and answer packet.

THE COURT: Yes.

MS. HOFFMANN: It's the answer to question 12, I believe.

THE COURT: Famous independent expert economist. Okay. Go ahead.

MS. HOFFMANN: We believe that's addressed. If the Court believes that it should be addressed to a greater extent,

we will certainly consider language that's more fulsome, subject to not revealing any confidential information or economic analysis that we need that's essentially our work product.

Your Honor, I also want to, if I can, draw a distinction between this settlement and class settlements. Our settlement is a settlement among sovereign states and the Bank of America. We have chosen to make the settlement fund available for claims of restitution from injured parties. We thought that was important thing to do. Our settlement is not a Rule 23 settlement and it's not subject, our position is, to any sort of a fairness inquiry.

THE COURT: I know all that. I think you are also in a situation where Judge Marrero has already decided that there is not going to be a fairness inquiry and that all that's going to happen is that there is going to be an opportunity for the plaintiffs to propose changes, additions to the notice, and that Judge Marrero is reserving the right to approve that notice. I understand that.

But I guess it would be worth somewhat addressing the question of why for purposes of Judge Marrero approving that notice he might not want the option of requiring that the particular opt-ins understand how their share was calculated as opposed to being just told, don't worry, we have some economist that did it.

MS. HOFFMANN: Your Honor, we certainly would be amenable to making the language better.

THE COURT: It's not a language problem. It's a substance problem.

MS. HOFFMANN: Or adding more substance to the description.

THE COURT: Are you willing to add a substance to the allocation formula? What kind of substance are you talking about?

MS. HOFFMANN: We could add more detail to the description, perhaps. I would like to talk to my colleagues. But what I don't think is necessary is discovery.

THE COURT: Let's talk about what the form of that discovery is. I'm not asking you to agree to anything or to admit that you're subject to the Court's jurisdiction.

But going back to my first principle, when I walked in here, assuming I found that this has enough relevance for me to require discovery, what is the problem from your point of view with providing the actual analysis that is leading to the allocation formula?

MS. HOFFMANN: Your Honor, that analysis includes some work product and economic analysis that we are applying elsewhere in our investigation, and we would not want to reveal that.

THE COURT: Because you feel that there would be what?

MS. HOFFMANN: We believe that it would be damaging to our investigation and to our ability to negotiate effectively with other participants in the industry that we are investigating.

THE COURT: And that would be because if they found out the formula, what would happen?

MS. HOFFMANN: Well, there are elements in the formula that relate to the economic analysis that our economists are using to calculate damages, overcharges on particular type of instances.

THE COURT: I couldn't follow that at all. What is going to be the harm if other people learned about this formula? I should add, I don't know that they would ever have to since I could make this a confidential production. I still don't understand what the harm is.

MS. HOFFMANN: Your Honor, my recollection of the allocation formula is complex. It includes elements of the way the economists looked at particular instruments and determined overcharges. And I don't think it would be appropriate to reveal that at this stage in our investigation.

THE COURT: That's a little conclusory, so I don't know that it's going to carry much weight.

MS. HOFFMANN: Again, we are willing to look at our language in the notice and determine if we can make that more detailed to provide greater insight into the allocation

formula.

THE COURT: If we were to order production, what is the format of which this is in right now? Is there some report that identifies the allocation formula?

MS. HOFFMANN: No, your Honor.

THE COURT: What is there?

MS. HOFFMANN: There is really nothing except exchanges among us and our economist regarding work product.

THE COURT: There is no report or paper or discussion of what formula should be used?

MS. HOFFMANN: I don't think there is anything that I would call a report, no.

MR. SAVERI: Your Honor, may I?

THE COURT: Sure.

MR. SAVERI: This is Joe Saveri from Lieff Cabraser.

It would seem to me that if there is nothing written down and it's all in the heads --

THE COURT: She didn't say that. She said it's in the form of e-mails.

MR. SAVERI: To the extent there is a writing, it would seem to me that there is some description. It doesn't have to be the arithmetic, but it could be some kind of description about how you value certain claims, how you distinguish certain claims, and how the $67 million is going to be allocated between different types of people, potential

opt-outs or opt-ins. If that information exists, I haven't really heard much about why it would be burdensome to produce that.

THE COURT: It's not burdensome. There is another point which I accept as part of the burden, which is that there is some confidentiality work product.

MR. SAVERI: Your Honor, with respect to that, it seems to me that there are mechanisms that we could adopt to specifically allay those concerns. At this point we are talking about access to the information. We are not talking about whether the information that there is a confidentiality concern about would be put in the notice.

THE COURT: Let's pretend you get the formula, hypothetically. What do you then do with it in terms of making a proposal to Judge Marrero regarding --

MR. SAVERI: Now we are talking about the relevance of the material. We are not talking about the burden. But --

THE COURT: I haven't yet decided all this.

MR. SAVERI: I understand. Your question is what will we do with the information. And what we do with the information is we would look at it. And with respect to the notice, we would ask or make sure that to the extent that the notice describes what the individual recipient of the notice's share would be, whether that's fairly and accurately described.

I mean, your Honor, if the notice just says, you are

going to get $100,000, that would be the lump sum and I understand that maybe that would be enlightening because the recipient knows how much they bought, and this is how much they are getting. But, I mean, my experience in having done a number of these cases is that one of the questions that someone will ask when they are trying to make an informed decision about whether to accept that or not is how is that calculated? What was the math? I think that's --

THE COURT: Now we are going back to the same problem. That's why I am shaking my head.

MR. SAVERI: Your Honor, I think to the extent there is a plan of allocation and it provides a basis for a description of how an individual share was calculated either by type, by some general description, that's information that we would say needs to be accurately described in adequate detail. It is simply not enough, we would argue, to say, there is a plan of allocation, your claim has been calculated pursuant to a plan of allocation, and that information is useful to determine for any individual recipient of the notice whether to opt in and accept it or not. They are going to ask that question.

MR. HAUSFELD: Your Honor, if I may, as pointed out by counsel for the Attorney General, there is a specific question in the notice packet that starts off in the heading, how was my share calculated? So, obviously, that is a question that they

anticipate is important to being answered. And the answer starts with: Your share was based on a formula. What we are asking for is the formula.

THE COURT: I understand it's an unsatisfactory answer for many reasons, but that doesn't mean that it's necessarily going to be relevant because it may be that that's an appropriate -- sometimes the answer is, how was my share calculated? Answer: We are not going to tell you that. Just decide based on the amount of money you got and you decide whether you want to do this. That could be an adequate answer. Just because the question is in here, that doesn't mean we have to give all the information on it.

MR. HAUSFELD: Your Honor is absolutely correct. If they said, it's none of your business, I would calculate what you got. That's not what they said. They said it's based on a formula.

THE COURT: Mr. Hausfeld, if it said, that's none of your business, we would still be here saying, we'd like to know how you did it anyway.

MR. HAUSFELD: I am not so sure. If they were candid in saying to their potential solicited opt-ins, how we calculated, it is none of your business, that would be an accurate description of what they did.

THE COURT: I think that's tantamount to what they have done right now. They have essentially said that's none of

your business. They just did it in the polite lawyerly way.

MR. HAUSFELD: I respectfully differ, your Honor. If someone says to me something is none of my business, I understand that. If they say to me, hey, your allocation was based on a formula --

THE COURT: Which we are not going to tell you because it's none of your business.

MR. HAUSFELD: Put that in.

THE COURT: I don't think we are going to solve this by putting in, this is none of your business. It's obvious they think it's none of their business because, otherwise, they would have put the formula in or they would even tell you.

MR. HAUSFELD: Your Honor, if I may, this is a settlement which, in essence, is intended to be class wide. You're soliciting an entire group of people that did business with a particular defendant that had already been sued before any state investigations by private parties, over which this Court has jurisdiction. Judge Marrero indicated he is concerned that this potential class type settlement is going to affect the Court's jurisdiction as well as his ability to confer meaningful relief on the remainder of the class and the remainder of the claims.

THE COURT: We are going over old area. I would just point out, it's not of the magnitude of concern that you had impressed upon me. If it was, he would have a fairness hearing

on it. It's something less than that.

MR. HAUSFELD: Your Honor, again, I respectfully disagree. Without the Court's statement of findings, reasoning and conclusions, as you started this hearing, it is a little unclear exactly what was bothering the Court and what he wanted to do about it.

And one of the things that we had asked at the beginning of this process, not with you, but with the bank and the state AGs, was to wait for the issuance of those findings and reasoning and conclusions which would have helped formulate responses more intelligently and rationally.

THE COURT: The ones from Judge Marrero?

MR. HAUSFELD: Yes.

THE COURT: I wouldn't count on your getting much more out of that. I've got a feeling that might be limited to the legal basis for the order. I don't know that it's going to elaborate on the content of the order. There is no point in waiting.

MR. HAUSFELD: In that respect then --

THE COURT: There may be a point in my doing my rulings and you're objecting and taking it to Judge Marrero. That's a different question. But we are not going to wait on anything.

MR. HAUSFELD: In that respect, when the Court raises concerns about actions which would undermine the Court's

jurisdiction, and which might impede the Court's ability to render meaningful relief on the remaining claims before it, I think all of these questions are significant and material to those concerns.

What makes this entire process unprecedented is the existence of a prior claim asserted in this court under federal jurisdiction which preceded by a year or more any state investigation, and clearly by more than a year of any attempted state settlement of the same claims that were sought to being settled by the class plaintiffs and to which this Court appointed a special master for settlement purposes.

All of those factors have to be put in context as to why the Court was bothered at all to do anything with respect to states that basely said then, as they say now, this Court has no right to oversee anything that I do. They have lost that. That's gone. Judge Marrero has taken some jurisdiction over this.

THE COURT: I feel we are repeating long-ago battles, not even battles from earlier today, but ones from February.

Here is my problem. I have concern about the Attorney General's work product issues and matters they deem confidential and matters that may affect other settlements. So I have now focused once again on the relevance point, and I feel I'm back in the same boat as I was with respect to our discussion regarding the particular amounts and how the amount

was derived for. I have the same issue for the allocation as between the parties. I know you disagree. I know you think that's very important. And you are welcome to object to my failure to provide discovery when you provide your comments to Judge Marrero. Okay?

MR. HAUSFELD: I respect your Honor's decision, and we will preserve our rights to think about it on appeal.

THE COURT: What's left in terms of the discovery requests that isn't covered by what I've already said here?

MR. HAUSFELD: Three essential elements. One dealing with the economic analysis, or the determination of the settlement amount in the first place.

THE COURT: The 65 million?

MR. HAUSFELD: Yes. The issue simply is was there such an economic analysis done independently by the State Attorney General's economist. And if there was, is it burdensome to produce that analysis.

THE COURT: What's your position on that?

MS. HOFFMANN: Your Honor, that goes to the heart of our work product in this investigation, and we will not produce it. We cannot produce that and maintain the integrity of our investigation and our work product on a going-forward basis. We believe that this is not at all addressed to compliance with the March 1 order. It has nothing to do with the language --

THE COURT: I just wanted to hear about burden,

though.

This is even a step removed from what we are talking about here in terms of what is important for plaintiff to know. They know they are getting a hundred thousand dollars. How the Attorney General evaluated the claim that led to them getting $100,000 is even less pertinent than knowing the formula for the $100,000. I think if you lose on the first thing a fortiori, you're losing on this one. I assume you can't make an argument that's more relevant than that.

MR. HAUSFELD: Your Honor, this has been instructive in this respect. It's becoming clear, from what's being said, that this is a settlement that's being offered to entities to opt in to take in the literal black box. They don't know the formula. They won't know the analysis. As long as we are in a position now, given those admissions and acknowledgements, we will be able to comment in a notice to Judge Marrero, and then Judge Marrero can decide in the context of the concerns he has already expressed whether that's appropriate.

MS. HOFFMANN: Your Honor, I just need to make one statement here. This was an investigation undertaken by the state in the public interest. We entered into a settlement with Bank of America that encompassed many, many factors. We believe that it's a settlement that's in the public interest and in the interest of the parties that are going to be able to elect to claim restitution if they wanted to.

And I really have a problem with Mr. Hausfeld's assertion that this settlement is in some sort of black box and done in an obfuscatory manner that will injure parties that were hurt by the conduct of the conspirators.

THE COURT: I thought the black box analogy was perfectly appropriate, but that's just me.

MR. HAUSFELD: Thank you, your Honor.

MR. SULLIVAN: Your Honor, if I can interject. The implication of the black box is, I think -- it has connotations that could be misleading.

The negotiation was undertaken between the Bank of America and the states in good faith over a significant period of time with a substantial volume of information and data exchanged and provided at the same time, the same data and analysis was provided to the class plaintiffs. There was full discussion, full disclosure of what Bank of America's position was with respect to settling this matter, detailed information was provided, volumes of information was provided to the class. Bank of America suggested that the class and the AGs and the Attorneys General worked together. The Attorneys General chose not to. They have every right to make that position.

The notice that's going to go out will not give a formula that's based on work product. No notice in the class that has been presented in this matter has included such a formula. One of the more recent notices that Mr. Hausfeld

participated in makes no mention at all of a plan of allocation in a five-page notice. And there are other examples like that.

So I think while we are happy to have this discussion about whether the formula should or shouldn't be provided in the notice with Judge Marrero, I don't think discovery is necessary to get us to that point.

THE COURT: I don't know why we are going over this again.

MR. SAVERI: Your Honor, first of all, we represent individuals to whom Mr. Sullivan never produced the information that he described. I don't think that's really the point of why we are here today.

My clients are going to ask me, when they receive the notice, what this number is, what it represents, and how it was calculated. What we are asking for in terms of discovery is the kind of information in a notice and in the material that's provided to people who received that to make an informed decision, and that's why we are here today. If that information is not going to be provided, we understand that. But it means that our clients are going to have a very difficult time in making an informed decision about the letter that they received. And having done class action work for a number of years, this kind of notice would not comport with ordinary standards and the kind of due process notice that's required. But we understand your Honor's position. But why we

are here and why we asked is to get that kind of information in the notice that ordinarily people, entities, sophisticated businesses need to make the decision. That's the kind of simple request. I haven't heard very much about burden. I have heard about confidentiality. We understand your position. I just wanted to make that clear.

THE COURT: This is a policy decision, I guess, that Judge Marrero is going to have to make which is, is this going to be like the class notice? Is that what it's going to look like? Or is it something far less than that? And if there was -- I go back to what I said at the beginning. If it was something simple and nonburdensome, I would say just give it and at least it could be presented in a little more detail to Judge Marrero as to what you would be proposing to put in. When issues of work product are raised and they are not frivolous, I feel I have to put it over, as it were.

MR. HAUSFELD: Your Honor, if I may, I believe you have accurately described the dilemma. It is to some extent a policy decision. And without further guidance or without preguidance from the Court it makes it even more difficult at this point to select out what type of notice Judge Marrero was thinking of and what were underlying his concerns that he expressed in his March 1 order.

There are two other areas that we wish to go into, but I think that they are already kind of covered in the discussion

we have. We are going to want to see the basis for the statement of allegations. And in terms of burdensomeness, if they have that, will they turn it over to us in a meaningful manner. That is tied with your Honor's considerations of relevance and possibly that's -- that is a decision, as your Honor has said, that needs to be left to the Court.

THE COURT: You're referring to what letter, letter C? What are you talking about, the basis for the allegation?

MR. HAUSFELD: There is in the notice --

THE COURT: No.

MR. HAUSFELD: Yes, it is C, your Honor.

THE COURT: Letter C, which is characterized as the representations made by Bank of America to the Attorney Generals to support the settlement amount.

MR. HAUSFELD: Right. There is a running, several multi page statement of what the state AGs are prepared to prove at a trial, and we would like to see the basis for that.

THE COURT: You're asking what Bank of America told them, not --

MR. HAUSFELD: It's unclear whether it was Bank of America or it was more than Bank of America.

THE COURT: I'm reading your letter. You asked for representations of Bank of America. Now you want something else?

MR. HAUSFELD: Yes. Because based on what

Mr. Sullivan has said, I take that the bank has provided nothing differently to the state AGs than they had already provided to the class plaintiffs.

But what the state AGs have said in their statement to the class is they have information that they have gathered in their investigative efforts, which they do not limit to Bank of America, which support the allegations by the states that there has been collusive conduct in the market for derivatives generally, not just those engaged in by Bank of America. Either they have those documents and we are asking for them to be turned over, or it's too burdensome to produce them. We don't want any notes or any work product.

THE COURT: This would presumably come exclusively from the AG, because you got whatever it is from the Bank of America.

MR. HAUSFELD: Yes.

THE COURT: I'll hear from them on burden.

MS. HOFFMANN: Your Honor, my understanding of this request is that the class counsel are requesting essentially all of the information compiled during the three-year investigation that we have conducted in this industry pursuant to our subpoena power.

Let me say two things about that. One is, we believe that class counsel now have a considerable amount, if not all of that information, not including work product, because they

have access to things like audiotapes and documents and e-mails and data from many of the participants in the industry. That's my understanding of the correspondence I have seen on the docket relating to discovery in this matter.

And apart from that, your Honor, again, this is part of our investigatory file, class plaintiffs have served our office with a Freedom of Information law request, which we are addressing and will respond to in due course, consistent with the policies of the office. But we are not prepared to turn over our investigatory files voluntarily to the class.

THE COURT: So it's burden, it's work product. What's the problem?

MS. HOFFMANN: Your Honor, it's a confidential investigation, and we don't believe it's relevant to the notice.

I should also point out --

THE COURT: So there is no burden. It's work product?

MS. HOFFMANN: Your Honor, it would be enormously burdensome.

THE COURT: Ms. Hoffman, I'm trying to get you to answer my question. I hope you won't feel put upon if I just ask you to state on the record whether it's burden or work product or both.

MS. HOFFMANN: Your Honor, I apologize. It's both. And, your Honor, I also want to mention, we have reviewed,

although we do not believe that our settlement is subject to the same kind of scrutiny as the Rule 23 settlement, we have reviewed notices in class actions, and none of them revealed the basis for allegations in terms of documentation to a group of plaintiffs before they have chosen whether they are going to opt in or opt out of the settlement.

THE COURT: I'll accept the representation on burden, that this would be very burdensome. Of course, I can see a work product issue. Again, this fits into this larger picture problem of what their vision is of what's required to be disclosed in the notice.

In light of the burden and the work product issue, I am not going to order discovery at this point at this time.

What's left?

MR. HAUSFELD: Your Honor, with respect to the burden generally and work product, normally, in order to assert a work product privilege, it can't be asserted in the abstract. We have not heard any particulars as to what specific information is deemed to be work product so we can challenge that. Could we get a log?

THE COURT: Not from a nonparty who has not even had a subpoena or anything else. That would be burdensome in and of itself. I think it's better for the big picture to be decided before we get to that point.

MR. HAUSFELD: I don't disagree, your Honor. I think

it is a situation where the big picture is to be clarified by the Court because for the Court to accept at face value, and it may be correct, though, that the production, for example, of a formula upon which it's represented they base the allocation on involves work product, is a little stretch.

Normally, traditionally, there would be an ability to test, what is work product separate from the formula? Can the formula be produced without the work product? With regard to burdensome, that would normally be a request, for example, to provide an index or an inventory. That shouldn't be burdensome.

THE COURT: We are in a little bit of a streamlined process here. This is not typical discovery. This is our effort to quickly determine what we can get to allow you to give comments on a notice that's not part of this case and for which there are reasons not to delay. I don't think that these typical requirements of Rule 26 discovery are necessary.

MR. SAVERI: Your Honor, I would just say, at a minimum, if there is a burden claim, it must be particularized at some level, and the simple affirmation, that, yes, it is burdensome, I would submit, respectfully, is insufficient.

THE COURT: And which burdensome affirmation did you feel was insufficient, the one as to every document that supports their allegations?

MR. SAVERI: I don't want to rewind the tape, but with

respect to the plan of allocation, I didn't think that there was a particularized showing of --

THE COURT: I didn't think there was any burden showing on that.

MR. SAVERI: Excuse me, your Honor?

THE COURT: I think the showing that I accepted was that it was confidential and work product rather than burden.

MR. SAVERI: Excuse me, your Honor. Maybe I didn't hear that correctly. But with respect to the last point, it seems to me --

THE COURT: The last point meaning every document that supports --

MR. SAVERI: We are talking about the particular statements and information that may have been provided by Bank of America and others.

THE COURT: No, no, no. Not Bank of America, because I think everyone agreed they had that. It was the non Bank of America documents, wasn't it?

MR. SULLIVAN: Your Honor is correct.

THE COURT: And then the Attorney General said, now you're asking us to talk about every subpoena we issued as part of this three-year investigation. That seems so obvious that would be work product and burdensome and they would have a confidentiality interest in not revealing the scope of their investigation. I didn't require anything further. If there is

some particular question you want asked, I don't mind seeing if we can use this opportunity to get an answer.

MR. SAVERI: No, your Honor.

MR. HAUSFELD: Your Honor, for purposes of the record, if I may, your Honor has expressed that this request for discovery and this search for information is, I think the words you used are not part of this case.

THE COURT: It's not part of the claims in this case, the merits of the claims, which is what Rule 26 applies to, the claims or defenses in this case.

MR. HAUSFELD: I respectfully differ, your Honor.

THE COURT: Hold on. Stop. If you would like to obtain this discovery for some other purpose, which is to prove your claims in this case, we will have a very different track for that and it will not be expedited. It will involve subpoenas and document requests and the need to be consistent with my prior order. That's fine. I'm not saying -- I'm not making any ruling as to the relevance or burden or producibility of any of this material with respect to your claims or defenses in this case.

MR. HAUSFELD: There is an aspect of what has occurred which Judge Marrero clearly took note in his March order. Because if he wished to do nothing, if he felt that this was a process that could occur totally outside the oversight or supervision or jurisdiction of this Court, he would have done

nothing. He did something.

THE COURT: Obviously, I'm open to some discovery or we wouldn't be here. I would have just issued an order saying you're entitled to no discovery on this.

MR. HAUSFELD: But the discovery issue goes to the dilemma your Honor identified with respect to the policy behind Judge Marrero's concerns, what type of notice is this.

Before notice would go out in a typical class action, there would had to have been a motion for preliminary approval and there would have had to have been a decision by the Court that it made sense to do that and that the proposal was fair and reasonable.

THE COURT: We would have a fairness hearing, in fact.

MR. HAUSFELD: No. The fairness hearing would occur after notice.

THE COURT: Whatever.

MR. HAUSFELD: But that step has been bypassed through this process. And the fairness hearing, as well, that would have occurred subsequently is likewise bypassed. So there are no indicia of a traditional review or oversight by a Court to determine whether or not a settlement is fair or reasonable or a claimant should accept or not accept participation in a particular settlement.

THE COURT: We are a little bit spinning our wheels here. This is the very policy issue that I said is going to

have to be brought up with Judge Marrero.

MR. HAUSFELD: All I wanted to do, your Honor, and I appreciate your indulgence in allowing me to state that for the record, we do believe that's a policy issue. We do believe that issue needs to be decided, given the observations about what is and is not being said in the notice.

One of the things that was somewhat disturbing in terms of an acknowledgement this morning, in one of the letters from the state AGs, there was a reference made to the fact that by reason of this seeking of the discovery by the class plaintiffs and the California plaintiffs, the ability of the state AGs to send out this notice has been unduly delayed. But given what the state AG said, they are not even ready yet to do that themselves. So there are representations being made that don't accurately characterize this process. And I think --

THE COURT: Duly noted. I am not sure it's relevant to any of our issues today other than the fact that we are not in perhaps the rush that we were told about earlier. But it really doesn't affect what I was doing because I am prepared for what I view as nonburdensome discovery to require it. And if it takes a few weeks, that's not a problem for me. But we have larger issues than that.

MR. HAUSFELD: Yes, your Honor. And as your Honor has stated a number of times, to which we agree, those larger issues need to be decided and addressed by the Court.

THE COURT: Any other topic areas that have not essentially been disposed of by what you said? Is there something that you agree is not burdensome and is not subject to an objection that I think is reasonable?

MR. HAUSFELD: I don't think anything --

THE COURT: The famous data from Mr -- begins with a Z.

MR. HAUSFELD: Zwerner. It took us six weeks to seek the information and two hours to learn that the Bank of America had no information to give us because Mr. Zwerner is no longer in their control, and they cannot state with any certainty whether or not what he did had any impact on the financial materials that were disclosed to us.

MR. SULLIVAN: Your Honor, may I correct the record again. Mr. Hausfeld must have misspoke because we told class plaintiffs, as soon as this order information was filed and we had the first discussion about it, that the reason we could not proffer any information to the class plaintiffs about this order information before that time was because we didn't learn of it ourselves. It only came to us from the Justice Department. But they knew that we didn't have access to Mr. Zwerner immediately. It didn't take six weeks to get -- for them to get that information.

We did go through with them and spent three hours with them two days ago and went through the particular trades that

are in the so-called kitty and provided what information we have been able to gather based upon our own investigation, even though the results are limited.

But to get to the question of discovery versus notice, which is, I think, what you were asking about, the class has a proffer. They have the documents. The Oakland plaintiffs, along with West Virginia, sent us a discovery request for this information. To the extent they have requested information, they will get it this Friday, the 13th of May. So I think, unless there is disagreement from the plaintiffs here, I think we can proceed on the basis that they will have that discovery by no later than Friday, May the 13th.

MR. HAUSFELD: What we were seeking the discovery for was what was just not addressed, which is whether or not that what Mr. Zwerner did affected the financials. The answer to that is the bank does not know. We are satisfied with that answer as of now, and we are not seeking any further information from the bank on that.

THE COURT: That's the end of it?

MR. HAUSFELD: Yes.

THE COURT: Anything else on your list of desired discovery that we have not covered?

MR. SAVERI: Your Honor, I think that in large part our request with respect to Zwerner has been dealt with by the previous discussion. Just for purposes of the record, we

requested -- among the material we requested was some information about whether the plan of allocation or other materials that would be used to determine shares to individual class members or potential opt-ins to this settlement was affected by any tainted data. I am not going to belabor that because I think you have already heard argument about the extent to which we are entitled to material regarding the plan of allocation.

To my mind, it would be a subset of that and I don't mean --

THE COURT: Just to be clear, I'm willing to order discovery on what might even be potentially irrelevant matters as long as I don't see a burden or a work product problem. This might have been an area where I would like to have you get this information and with that information you could make the argument to Judge Marrero. The only reason you haven't gotten the other information is I felt they were really burdensome as to work product and confidentiality concerns. I am not sure I feel this way about this data. Is there something you want that you have not been getting?

MR. SAVERI: What we would want, and maybe this would be subject to some kind of response from the AGs or the B of A, we want to know whether the plan of allocation as it was determined, or whatever the basis is of the plan of allocation, whether it has been affected or tainted by the information

that, apparently, because of Mr. Zwerner's activity, was fraudulent or might be otherwise unreliable. And I don't know --

THE COURT: This could be a very narrow question that perhaps they wouldn't mind answering, which is that for purposes of doing any calculations they did, in line No. 208 or whatever it is that has the data that shows the revenue, did they rely on Bank of America's data, which you believe is tainted and which they may have other explanations for.

MR. SAVERI: That's correct, your Honor. I didn't want to prejudgement answer --

THE COURT: It's possible they won't object to answer that. We will turn to them and find out.

MS. HOFFMANN: Your Honor, I can answer that question right away. We have looked at this Zwerner data. We have gone through it. We are taking it into account in allocating the restitution part.

THE COURT: You are not taking Bank of America's data at face value.

MS. HOFFMANN: That is correct.

THE COURT: Bank of America's input --

MS. HOFFMANN: With regard to the transaction, which the Zwerner kitty, we are taking it into account in revising the allocation so that --

THE COURT: How are you taking it into account?

MS. HOFFMANN: I am not trying to be evasive here. I understand my very basic understanding is that sometimes the profits were overstated, sometimes they were understated. We are figuring in those precise amounts to the extent we can to determine --

THE COURT: Are you just willing to describe perhaps in writing what you did to do that? In other words, how do you know that something was over or understated?

MS. HOFFMANN: I will have to talk to my group. I think in principle what we are willing to say today is we are taking it into account on a transaction by transaction basis for purposes of the allocation.

THE COURT: Would you want more than that?

MR. SAVERI: Your Honor, with respect, I would like an answer to the last question you asked, how was it taken into account.

THE COURT: And you don't know whether you want to answer that?

MS. HOFFMANN: I don't know whether we can describe it to a greater extent than I have just described it.

THE COURT: Someone could answer it, presumably. And someone must be able to say that there was some method by which they decided something was over or under, based on some principle.

MS. HOFFMANN: I think perhaps, your Honor, with all

respect, perhaps this can be addressed best by looking at the language in the notice regarding allocation and trying to propose more detailed language that would take into account this issue as well.

THE COURT: Let me change the topic area.

On the question of answering this question, I guess we could put off to see if they are willing to answer it. And if they don't, that would be another complaint to Judge Marrero.

My suggestion is, you write a letter either saying we are not going to give you further information or providing the methodology or whatever else. If you can do that --

MR. SAVERI: That seems perfectly fair, your Honor.

THE COURT: Do that in the next few days. If you don't give it, explain why you are not giving it, burden, work product, whatever it is. Please explain in detail.

MR. SAVERI: That works for us, your Honor.

THE COURT: Anything else on your list?

MR. HAUSFELD: Nothing, your Honor.

THE COURT: I guess we need a plan of action.

I suppose what you could do is consider this in an aisle of discovery in any areas where I didn't give you the discovery, and then you should somehow make a presentation to Judge Marrero.

I guess there is two ways you can do this. One is, you could object to the failure to get the discovery. The

other way, which might be better, would be to do it all in one package, which is to say, here is our comments to the class notice with the information we have now. Here is why it's totally inadequate, because we didn't get discovery on this, that, and the other thing, and here is why we need that discovery. Because we want to be able to beef up this notice to have the following kinds of things, and discovery would allow us to do that. I think that's the better way to do it.

When do you think you can put that together?

MR. HAUSFELD: That would depend in large part on the production that your Honor did grant discovery on, and that's the list, and I would say within two weeks of getting that list.

THE COURT: That's fair. And then you would presumably respond to that letter to Judge Marrero?

MR. SULLIVAN: Yes, we would, your Honor. We could respond to that within a week. I would like to at least explore this so we can move this along. I know the state has an interest in moving this along. We would like to get this issue resolved and potentially move us forward in other aspects of this case.

Knowing precisely who is on the list is not going to be necessary for the plaintiffs to make their arguments to Judge Marrero about the content of the notice because the content of the notice is going to go to those parties. They

will get those parties.

THE COURT: Why do you need the actual list in order to make these arguments?

MR. HAUSFELD: So that we can determine an argument that we would make as to the adequacy of the -- to whom the notice is being sent. And then we can check the names of the entities will be accompanied by the transactions, so we will be able to know why they are getting this and who is getting it. And, in our opinion, we want to object to that aspect of the notice as well.

THE COURT: There is your answer. What do you want to say about it? Are we going over a week here? I thought this list was coming pretty soon.

MR. SULLIVAN: I think the AG suggested it would be within about a week.

THE COURT: We are arguing over one week. This is not worth it.

MR. SULLIVAN: Why don't we schedule it for say two weeks.

THE COURT: Two weeks from when they get the list. The Attorney General has every incentive to speed this along. They are the ones that have the greatest interest. I am going to rely on them to act expeditiously. Maybe the two-week period is too long. It seems to me you can pretty much prepare this starting now. Can you do it one week from when you get

the list. This is all on the table right now. You've written the letters anyway.

MR. HAUSFELD: Again, your Honor, being of utmost candor, we are coming into graduation season. A lot of people --

THE COURT: That's why I don't want to put it any later.

MR. HAUSFELD: That's why I said give me two weeks so we can work our personnel in a way that we can get it done within two weeks of when we get it.

THE COURT: Here is what I am going to do. Let's say one week. If you need more time, talk to the other side. If there is a dispute, write me a letter. I'll be very reasonable about extensions. Let's shoot for one week. Let's start preparing it now. If you need more time, just come back to me.

MR. HAUSFELD: Thank you.

THE COURT: One week for the response.

Anything else from plaintiffs?

MR. HAUSFELD: No, your Honor.

THE COURT: From your side?

MR. SULLIVAN: No, your Honor.

THE COURT: Thank you.

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